IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

Crl.Rev.Pet.No. 4444 of 2006()

CRA.118/2002 of ADDL.SESSIONS COURT, THALASSERY
CC.892/2001 of ADDL.CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY

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REVN. PETITIONER: APPELLANT/ACCUSED

A.T.NOUSHAD, S/O.N.P.ABOOTTY,
A.T.HOUSE, ERANHOLI, CHUNKAM,
P.O.ERANHOLI, THALASSERY.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS: RESPONDENTS/COMPLAINANT

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1. KARUNAKARAN, MOULAVI AGENCIES,
M.G.ROAD, THALASSERRY.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.C.P.PEETHAMBARAN
SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 23/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.A. No. 12861/2006 IN Crl.R.P.No. 4444 of 2006

DISMISSED.

23.10.2007 SD/- V. RAMKUMAR, JUDGE.

/True Copy/

P.A to Judge.

V.RAMKUMAR, J.

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Crl.R.P. No. 4444 OF 2006

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Dated this the 23rd day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.892 of 2001 on the file of the Addl. Chief Judicial Magistrate, Thalassery challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions before me:-

Ext.D1 series of order forms will clearly show that the liability under Ext.P1 cheque does not subsist. The specific case of the revision petitioner has been that the cheque in question was not entrusted with the complainant but with DW2 and there is no liability for the accused

towards the complainant examined as PW1. Exts. D2 and D3 post cards will show that Ext.D4 notice was preceded by two other notice and if time is reckoned from Ext.D3 post card, the complaint filed was hopelessly time barred.

5. Both the courts below have considered the above contentions and have rejected the same. Ext.D1 series of order forms have not been shown to pertain to the transaction in question. DW2 with whom the cheque in question was allegedly entrusted did not support the defence. If the cheque was really entrusted with DW2 as alleged by the accused, it has not been shown as to how the cheque came into the hands of the complainant particularly when DW2 does not have a case that the accused had entrusted the cheque with him while availing a loan which is alleged to have been discharged also.

6. As for the contentions based on Exts.D2 and D3 post cards the first of them only show that the complainant is going to present the cheque before the drawee bank. The second post card only states that the bank has dishonoured the cheque and the complainant will be initiating proper legal steps. Both these post cards do not amount to notice as contemplated under Section 138 of the Negotiable Instruments Act. Moreover, there is no demand of the cheque amount as well. As against this Ext.P4 notice conforms to the requirements of Section 138 of the Act and that alone can be reckoned as the valid statutory notice. The complainant was well within the period of Limitation.

7. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and

documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

8. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. The sentence imposed on the revision petitioner is set aside and instead he is sentenced to pay fine of Rs.25,000/-(Rupees twenty five thousand only) which shall be deposited within two months from today and on default to make the payment, he shall suffer simple imprisonment for three months. The fine amount shall be paid as compensation to the complainant under Section 357(1) Cr.P.C.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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